



**Upper Tribunal
(Immigration and Asylum Chamber)**
IA/25183/2013

Appeal Numbers:

IA/25206/2013

THE IMMIGRATION ACTS

Heard at Field House

On 25th June 2014

Determination

Promulgated

On 27th June 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE FRANCES

Between:

**NATIA GELASHVILI
MARIAM GELASHVILI**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance

For the Respondent: Mr G Jack, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

The Appellants

1. The Appellants are citizens of Georgia born on 10th July 1984 and 8th August 2011 respectively. They appeal against the determination of the First-tier Tribunal dated 14th December 2013 dismissing their appeals against the Respondent's decision of 8th June 2013 refusing to issue a

residence card as confirmation of a right of residence under Regulation 6 of the Immigration (EEA) Regulations 2006.

2. The Second Appellant's appeal is dependent on the First Appellant showing that her husband, the Sponsor, was a qualified person. I shall therefore refer to the First Appellant as the Appellant in this appeal.
3. Permission to appeal was granted by Upper Tribunal Judge Rintoul on 15th May 2014 on the grounds that it was arguable First-tier Tribunal Judge N Manual took into account irrelevant matters, raising an issue which had not been in dispute between the parties, and from which she drew inferences which were adverse to the Appellant and which she took into account in determining that the Sponsor was not exercising Treaty rights.
4. On 30th May 2014, the Appellant's solicitors requested an adjournment on the basis that counsel was on annual leave on 25th June 2014. The application was refused. At the hearing before me, there was no appearance by the Appellant, the Sponsor or her solicitors. I was satisfied that the notice of hearing was properly served and heard the appeal in the Appellant's absence.
5. Mr Jack submitted that the burden was on the Appellant to show that the Sponsor was a qualified person. At the time of the application, the Sponsor claimed to be self-employed, but failed to authorise HMRC checks so that the Respondent could authenticate this claim. The application was refused. At the time of the appeal, the Sponsor claimed to be employed.
6. Mr Jack submitted that the appeal was decided on the papers at the Appellant's request. The burden was on the Appellant to show that the Sponsor was employed at the date of hearing as he claimed. The Sponsor had produced four payslips in support of this claim. This evidence was not before the Secretary of State. There were no bank statements to support the Sponsor's claim that he was now employed. The Judge found that the evidence before her was contradictory. The accountant's letter and the skeleton argument stated that the Sponsor was self-employed. This was contrary to the evidence of the Sponsor and his employer. The Judge was entitled to conclude that the Appellant had failed to show that the Sponsor was employed and was therefore a qualified person. There was no error of law in the Judge's decision.
7. The Judge's findings on the Appellant's relationship with the Sponsor immediately succeeded the Judge's findings under the EEA Regulations. These findings were relevant to her assessment of Article 8, not her findings under the EEA Regulations. Article 8 was not relevant to this appeal since there was no removal decision and the Appellant could submit a further application supplying sufficient documentation to satisfy the EEA Regulations.

Discussion and conclusions

8. The grounds submit that the Judge applied the wrong standard of proof. There was evidence before the Judge to show that the Sponsor was a self-employed contractor from February 2011 to June 2013 and was now employed by the same company. The payslips corroborated this claim. The letter from the accountants confirmed that the Sponsor was self-employed and referred to the tax return for 2013/2014 because he was still self-employed from April to June 2013. In addition the relationship between the Appellant and Sponsor was not in question and the Judge's concern as to whether the Appellant was married or the paternity of the child were immaterial.
9. The appeal before the First-tier Tribunal was decided on the papers at the Appellant's request. The documentary evidence before the Judge was contradictory. The Appellant claimed to have been employed since June 2013. The letter from the employer and the four payslips supported this claim. However, the letter dated 22nd October 2013 from the Sponsor's accountants stated that he was self-employed, as did the skeleton argument submitted for the appeal. The Judge's finding that it was unclear whether the Sponsor was employed or self-employed and the documentary evidence was insufficient to show that the Sponsor was a qualified person under the EEA Regulations was open to her on the evidence. There was no material error of law in the Judge's determination.
10. The Judge's subsequent findings on the Appellant's relationship and the paternity of the child were relevant to her findings under Article 8. The Judge having already found that the Appellant had failed to show that the Sponsor was a 'worker' as claimed.
11. I find that there was no error of law in the Judge's determination under the EEA Regulations. There would be no breach of Article 8 because the Appellant could make further application. The Judge's findings at paragraph 19 onwards were immaterial to the decision under the EEA Regulations.
12. Accordingly, the Judge made no error on any point of law which might require the determination to be set aside. The appeal to the Upper Tribunal is dismissed. The determination of the First-tier Tribunal dated 14th December 2013 shall stand.

Deputy Upper Tribunal Judge Frances
26th June 2014